

## **SETTLEMENT AGREEMENT AND RELEASE**

THIS AGREEMENT was made on December 11, 2016 between:

MARVIN GILLAM and PAMELA GILLAM,  
referred to as "Plaintiffs,"

and

CITY OF VALLEJO, and JOSEPH MCCARTHY and JEROME BAUTISTA, in  
their official and individual capacities,  
collectively referred to as "City Defendants."

### **A. RECITALS**

1. On October 13, 2012, plaintiffs were arrested by Vallejo Police officers in connection with Vallejo police report number 12-12907.
2. On September 24, 2014, plaintiffs filed a federal civil rights lawsuit in the Eastern District of California in the United States District Court, case number 2:14-cv-2217 KJM KJN, hereinafter referred to as "the Litigation", alleging excessive force related to the arrests of October 13, 2012.
3. The parties now desire to compromise and release all present and prospective claims which they now have, or may come to have in the future, against each other, and to release each other from such claims related in any way to the events listed paragraph 1-2 above.

### **B. TERMS AND CONDITIONS OF SETTLEMENT**

4. **Consideration.** The settlement between the parties contemplates the following consideration:
  - a. City of Vallejo shall pay plaintiffs a total sum of Five Thousand Dollars (\$5,000.00) in full and final satisfaction of all claims, fees, costs and liens as follows:
    - i. Within seven days of receipt of the fully executed settlement agreement, the City of Vallejo shall issue the funds referenced above to plaintiffs.
  - b. Plaintiffs shall dismiss the Litigation with prejudice, Gillam et al. v. City of Vallejo et al., case number 2:14-cv-2217 KJM KJN, within 5 days of receipt of the payment referenced above.
  - c. Each side shall bear its own costs and attorney fees.

5. **Release.** In consideration of said funds and as further consideration for this Compromise and Release, each party covenants and agrees that:

- a. The parties to this agreement understand that liability in this case is disputed and this agreement is a good faith compromise and settlement of disputed claims, and shall not be construed in any way whatsoever as an admission of liability.
- b. The parties warrant that they are the sole owners of all claims arising from the actions described herein.
- c. All parties hereto covenant and agree that they will not at any time hereafter commence, maintain or prosecute any actions at law or otherwise, or assert any claim against any of the above-named parties, or their agents, employees, successors or assigns, City Council, City Departments, attorneys or insurers for any damages, injuries or losses of any kind or amount arising out of or in any way connected to or resulting from the subject incidents on October 13, 2012 referred to in Paragraphs 1-2 above. All parties hereto waive all rights and benefits, which they now have or in the future may have under the terms of Section 1542 of the Civil Code of the State of California, which reads as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

- d. All parties hereby release and forever discharge each other, and their agents, employees, successors or assigns, City Council, City Departments, attorneys or insurers from any and all claims or demands, actions or causes of action, known or unknown, including all damages, arising out of or in any way connected to or resulting from the subject accident referred to Paragraphs 1 and 2 above.
- e. The parties hereto understand and agree that this settlement and release shall act as a release of future claims that may arise from the above-mentioned accident, whether such claims are currently known, unknown, foreseen, or unforeseen. The parties understand and acknowledge the significance and consequence of the specific waiver of Section 1542 described above and hereby assume full responsibility from any injury, loss, damage or liability that may hereafter be incurred by reason of or related to the matters alleged and raised by the Litigation.
- f. The terms of this release and settlement are contractual and are not mere recital. This release and settlement is executed without reliance upon any

representation by any person concerning the nature and extent of the injuries or legal liability thereof, and the undersigned have carefully read and understand the contents of this contract and sign the same as their own free act.

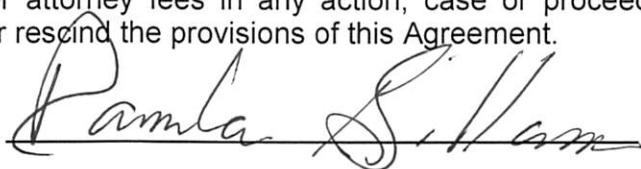
6. **Liens.** The undersigned plaintiffs specifically agree that any and all known and unknown liens will be satisfied from the proceeds of this settlement. Furthermore, the undersigned plaintiffs specifically agree to assume liability for the payment of any liens or claims of any kind by, but not limited to any medical provider, governmental entities, Medicare, insurance liens and any liens of attorneys. The undersigned plaintiffs agree to indemnify and hold the City of Vallejo, the City Defendants, and its third party adjuster, Athens Administrators, harmless from any and all such claims or liens. The undersigned agrees to satisfy any future medical expenses from the settlement proceeds paid pursuant to the settlement of this matter. As of the date of this signing, plaintiffs has provided the released parties all information known to him about any existing Medicare liens or any other liens. Plaintiffs agree to defend, indemnify and hold harmless each of the persons, firms and corporations released hereunder with respect to all Medicare liens related to the subject incident for which the federal government may seek repayment.
7. **No admission.** This release and settlement agreement is (1) the compromise of a disputed claim and fully and finally settles all claims between the parties to this dispute; and (2) to buy peace and to further prevent any further involvement by the parties in this dispute. Neither the payment of any consideration hereunder, the waiver of any claims, nor anything contained in this Agreement shall be interpreted or construed to be an admission on the part of, nor to the prejudice of any person hereto, and each party expressly denies any and all liability associated with or related to said dispute, and claims herein described.
8. **No inducement.** Each party individually and collectively declares and represents that no promises, inducements, or other agreements not expressly contained herein have been made. Each party signing hereto represents and warrants that each of them read, knows and understands the contents hereof, has executed this agreement voluntarily, and has not been unduly influenced by any person or persons.
9. **Binding effect.** This settlement agreement and release shall inure to the benefit of each party hereto or benefit thereby its predecessors, successors, subsidiaries, affiliates, representatives, assigns, agents, officers, directors, employees, and personal representatives, heirs, past, present and future.
10. **Severability.** If any provision of this agreement is held invalid, the remainder of the agreement shall nevertheless remain in full force and effect in all other circumstances.
11. **Execution.** The parties named below have executed this settlement agreement and release as of the date and year appearing below adjacent to the signatures of the parties. This agreement shall be binding upon the receipt of facsimile signatures or e-

mailed by PDF or otherwise. Any person transmitting their signature by facsimile or electronically shall promptly send an original signature to the other party. The failure to send an original shall not affect the binding nature of this Agreement.

**12. Advice of Counsel.** The parties have been afforded the opportunity to seek the advice of an independent attorney, and have either been advised by an attorney regarding this agreement, or hereby waive the right to be advised by independent counsel.

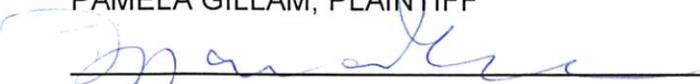
**13. Enforceability.** In the event the terms and conditions of this Agreement are breached or are not abided by either party to this settlement, either party may seek relief pursuant to C.C.P. §664.6 to enforce the terms of this Agreement, notwithstanding any provisions of Evidence Code §§ 1115-1128. The prevailing party shall be entitled to recover attorney fees in any action, case or proceeding maintained to enforce, interpret or rescind the provisions of this Agreement.

Dated: 12/11/16



PAMELA GILLAM, PLAINTIFF

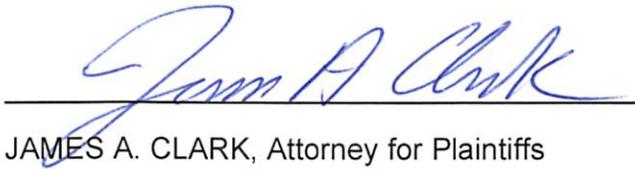
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MARVIN GILLAM, PLAINTIFF

APPROVED AS TO FORM:

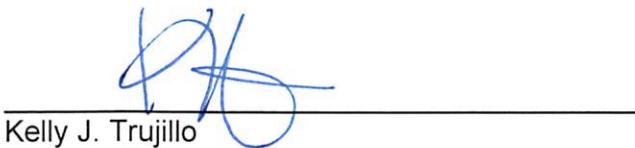
Dated: 12/11/16



JAMES A. CLARK

JAMES A. CLARK, Attorney for Plaintiffs

Dated: 12/11/16



Kelly J. Trujillo

Attorney for the City Defendants